

PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

FILED

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STATE BAR COURT  
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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of ) No. 16-O-15558

DREXEL ANDREW BRADSHAW, ) OPINION AND ORDER

State Bar No. 209584. )

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Drexel Andrew Bradshaw is charged with five counts of misconduct related to his position as the successor trustee of a client's trust and his involvement with a construction company that repaired the client's home. The Office of Chief Trial Counsel of the State Bar (OCTC) charged Bradshaw with four counts related to his handling of the trust: engaging in a scheme to defraud the trust, breaching his fiduciary duties to his client and the trust beneficiaries, misappropriation of trust funds, and making several misrepresentations to the probate court and other government agencies. The hearing judge found Bradshaw culpable of those charges, except for misappropriation. On the remaining count, OCTC charged Bradshaw with engaging in the construction business without a contractor's license; however, the hearing judge did not find Bradshaw culpable of that charge and OCTC does not challenge its dismissal on review. Ultimately, the judge recommended that Bradshaw be disbarred.

Both Bradshaw and OCTC appeal. Bradshaw asserts that he is not culpable of any charge. OCTC argues that Bradshaw is culpable of the three charges found by the hearing judge, and also the misappropriation charge she dismissed, along with additional misrepresentations that the hearing judge did not find. OCTC supports the judge's disbarment recommendation.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we do not find clear and convincing evidence to support culpability as to the charged misconduct. We reject OCTC's premise that Bradshaw wanted to start a construction company and used his position as trustee to start his "corrupt" enterprise. Bradshaw served as the successor trustee for a client years after his firm drafted the client's trust and estate plan, and only after the first two successor trustees were unable to serve. He managed the trust according to its stated purposes and terms in a reasonable and proper manner, including engaging a certified specialist in probate and trust law to assist him in his duties. Further, he adhered to his client's clearly expressed desires to be cared for in her San Francisco home, and that the equity in the home be used to accomplish that goal. To that end, Bradshaw used the trust assets, which consisted mostly of the home's \$1.6 million equity, to provide his client with quality nursing care and for necessary repairs to ensure her safety in the home, which was built over 100 years ago. For most of the construction projects, Bradshaw hired Bay Construction, a licensed contracting company that he incorporated on behalf of Juan Gonzalez, the owner, who had previously done work for Bradshaw and to whom Bradshaw had provided other assistance in establishing the company. In total, the trust paid Bay Construction \$157,246.76 for various construction projects, including replacement of the back stairs and repair of the home's foundation, all done competently and at fair market value.

The evidence in the record fails to establish that Bradshaw engaged in any of the acts as alleged by OCTC. Accordingly, we dismiss this proceeding with prejudice. (See *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 839 [dismissal of charges for want of proof after trial on merits is with prejudice].)

## **I. PROCEDURAL BACKGROUND**

On October 20, 2017, OCTC filed the original Notice of Disciplinary Charges (NDC) in this matter. The NDC was amended on January 11, 2018 (FANDC), and charged Bradshaw with

(1) engaging in a scheme to defraud his client's trust, in violation of Business and Professions Code section 6106;<sup>1</sup> (2) breaching his fiduciary duties to his client and the beneficiaries of the trust, in violation of section 6068, subdivision (a); (3) misappropriating \$157,246.76 from the trust, in violation of section 6106; (4) making several misrepresentations, in violation of section 6106; and (5) engaging in the construction business without a license, in violation of section 6068, subdivision (a).

The parties entered into a Stipulation as to Facts and Admission of Documents (Stipulation) on January 10, 2018, and on January 16 and February 14, the parties stipulated to the authenticity of trial exhibits. Trial was held on January 16, 17, 18, 19; February 6, 7, 8, 12, 13, 14, 15; March 6, 7, 8, 9; April 10, 11, 12; and May 1, 2, 3, and 4, 2018. The matter was submitted on June 1 after the parties filed their closing briefs. On August 30, the hearing judge issued her decision, finding Bradshaw culpable of three of the five counts of misconduct and recommending disbarment.

## II. FACTS<sup>2</sup>

### A. The Gosey Trust

In 2006, Bradshaw's law firm, Bradshaw & Associates, P.C., prepared Ora Gosey's estate plan, including the Gosey Revocable Living Trust (Gosey Trust). The trust listed three primary purposes: (1) to provide for Gosey's care and maintenance while she was alive; (2) to facilitate management of the trust property in the event of Gosey's incapacity; and (3) to

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<sup>1</sup> All further references to sections are to the Business and Professions Code unless otherwise noted.

<sup>2</sup> The facts in the opinion are based on the Stipulation, trial testimony, documentary evidence, and factual and credibility findings by the hearing judge, which are entitled to great weight, unless we have found differently based upon the record. (Rules Proc. of State Bar, rule 5.155(A); *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 748 [while factual and credibility findings by finder of fact are to be accorded great weight, on independent review of record, Review Department may decline to adopt hearing judge's findings if insufficient evidence exists in record to support them].)

facilitate transfer of the trust property after Gosey's death. It also stated that the trustee's "priority" was to "keep in mind that the health, maintenance, comfort and support of [Gosey] are more important to [Gosey] than any other purposes of [the] trust."<sup>3</sup> The trust also included a provision entitled "Limitations on Trustee's Duty of Loyalty[,"] which stated:

As long as the Trustee does not act in bad faith or in disregard of the purposes of the Trust, it is not a breach of the Trust for the Trustee to take any of the following actions: ¶ Employ the Trustee, a relative of the Trustee, or a business in which the Trustee has an interest, to perform needed services for the Trust or any business in which the Trust has an interest and pay compensation not exceeding fair market value . . . .

Thomas Bush and Willie Cole were listed, respectively, as the first and second successor trustees; and Bradshaw's firm was listed as the third. After Gosey executed her estate planning documents in January 2007, Bradshaw did not have any contact with her until she was hospitalized in 2013.

#### **B. Gosey Becomes Incapacitated**

In August 2013, Gosey fell in her San Francisco home. Her tenants, Claire Lewis and John Blaber, who resided in the downstairs rental unit, found her a few days later. At the tenants' request, Adult Protective Services (APS) visited Gosey, but she rejected its assistance. Two weeks after the fall, she continued to be in pain, and the tenants arranged for an ambulance to transport Gosey to a hospital.

After accompanying her to the hospital, Lewis returned to Gosey's home to locate documents identifying emergency contact information. Lewis found Gosey's trust and will, and contacted Bradshaw since his firm drafted the documents. Thereafter, Bradshaw met Lewis and Gosey at the hospital. After a period of hospitalization, a doctor determined that Gosey had

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<sup>3</sup> Gosey's will, handwritten by her contemporaneously at the time the trust was executed, indicated that she wanted to remain in her residence if she became incapacitated and that as much of the estate as necessary should be used to avoid placing her in "a rest home."

severe dementia and lacked the capacity to give informed consent to any form of medical treatment.

### **C. Bradshaw Appointed Conservator and Becomes Trustee**

Bradshaw retained Sheila Robello, a certified probate and trust law specialist, to represent him in the Gosey conservatorship and trust matters.<sup>4</sup> On August 30, 2013, Bradshaw filed concurrent petitions in superior court for temporary and permanent appointment as the conservator of Gosey's person and estate (conservatorship case).<sup>5</sup> In an attachment to the petition, Bradshaw inaccurately stated that Gosey had recently been removed from her home by APS. On September 11, 2013, Bradshaw was appointed temporary conservator, at which time he arranged for a service, the Institute on Aging, to provide full-time in-home care for Gosey.<sup>6</sup>

On November 14, 2013, Bradshaw was appointed permanent conservator, and he filed a petition in the conservatorship case requesting transfer of the assets in the conservatorship estate to him as the successor trustee of the Gosey Trust. Bradshaw also asked that the trust "not be under continuing court supervision as the additional expenses will only decrease the available assets for the conservatee." On December 5, the court ordered the trust funded and that Bradshaw file a trust accounting by February 2, 2015, for the period of December 2013 through November 2014. The court also ordered that it would retain jurisdiction over the trust until filing and approval of the trust accounting.

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<sup>4</sup> Bradshaw contacted Cole and asked if she was willing to serve as trustee. He testified that Cole told him she was unable to serve because she was ill. Bradshaw subsequently visited Bush in the facility where he was living, and he also declined to serve as trustee because he was ill too. Robello also contacted Bush and Cole upon reviewing the trust. She prepared declinations to serve as successor trustee, which Bush and Cole both signed in August 2013.

<sup>5</sup> *In the Matter of Conservatorship of Ora Gosey*, San Francisco County Superior Court No. PCN-13-297063.

<sup>6</sup> The Institute on Aging cared for Gosey from the time she was released from the hospital in September 2013 until she passed away on June 16, 2017, at age 90.

**D. Bradshaw Hires Juan Gonzalez for Repair Work**

In November 2013, Bradshaw hired Juan Gonzalez, whom he knew and had previously engaged to work on his own residence, to repair the damage from a burst pipe in Gosey's home. Gonzalez was doing business as NJ Construction and was not a licensed contractor; therefore, Bradshaw hired a licensed contractor, Celso's Plumbing, to supervise and work with Gonzalez. Gosey's insurance covered most of those repair costs.

**E. Bradshaw Obtains First Reverse Mortgage**

On February 14, 2014, Bradshaw filed a petition in superior court for an order authorizing him to obtain a reverse mortgage in the amount of \$346,000 on Gosey's home (trust case).<sup>7</sup> At that time, Gosey's home was valued at approximately \$1.6 million and the property had no liens. Bradshaw stated in the petition that a reverse mortgage was necessary because Gosey's care and living expenses exceeded her income by approximately \$7,147 each month. Bradshaw also stated that he had hired a contractor to repair a water leak and the resulting damage in Gosey's home. On April 1, the court authorized and directed Bradshaw to obtain the reverse mortgage.

**F. Bay Construction Established**

Also on April 1, 2014, Bradshaw, on behalf of Gonzalez, filed articles of incorporation to form Bay Construction.<sup>8</sup> On April 5, Gonzalez signed, as the sole director of Bay Construction, an "Action by Unanimous Written Consent," wherein he ratified Bradshaw's action as the

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<sup>7</sup> *In the Matter of the Gosey Revocable Living Trust*, San Francisco County Superior Court No. PTR-14-297499.

<sup>8</sup> Previously, in February 2014, Bradshaw and Gonzalez signed a legal services agreement where Bradshaw agreed to represent Gonzalez in seeking to obtain his contractor's license, and he also paid for Gonzalez to attend contractor's school. The hearing judge found the veracity of the agreement to be suspect because it contradicted Bradshaw's assertion that he was just trying to help Gonzalez and there was no evidence that Bradshaw issued billing statements to Gonzalez. We disagree because Gonzalez testified that he signed the agreement, and Bradshaw explained he never issued any billing statements because he never billed Gonzalez for services.

incorporator and named himself as the president, secretary, and treasurer of Bay Construction.

On that same day, Gonzalez also signed the Bay Construction shareholder agreement listing himself as the sole shareholder, chairman, and president. This and other evidence presented at trial revealed that Gonzalez, not Bradshaw, was the owner of Bay Construction.<sup>9</sup>

In October 2014, Bradshaw opened a checking account at Chase Bank for Bay Construction. Gonzalez was unable to open the account on his own due to his negative credit report. Bradshaw deposited \$10,000 from his law firm's checking account into the Bay Construction account. At the bank, he signed a blank signature card for the account. Subsequently, the title "president" was added to the signature card, but not by Bradshaw or at his direction. Bradshaw was the sole signer on the account, but Gonzalez used a debit card to access the account. Additionally, due to Gonzalez's bad credit, he was unable to obtain a credit card himself. Bradshaw's wife opened two American Express credit accounts for Bay Construction.<sup>10</sup>

Gonzalez was also unable to secure a contractor's license from the CSLB. Upon investigation, Bradshaw learned that Bay Construction could have someone with an existing CSLB license serve as a responsible managing officer (RMO) to supervise Gonzalez until Gonzalez could later obtain the license on his own once he had the necessary documented work experience. Bradshaw arranged for Raymond Invernon, who had an existing license, to be Bay

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<sup>9</sup> The other evidence includes the following items, all signed by Gonzalez: (1) an October 15, 2014 Contractors State License Board (CSLB) workers' compensation exemption form for Bay Construction, in which he stated he did not employ anyone subject to California workers' compensation laws; (2) a January 8, 2015 San Francisco business registration application, in which he stated he was the Chief Executive Officer (CEO) and owned 100 percent of Bay Construction; (3) a January 9, 2015 IRS form, in which he stated he was the CEO; and (4) a March 31, 2016 declaration, in which he stated he was the "CEO and sole shareholder of Bay Construction, Inc., a company I founded in 2014." The declaration also stated that Bradshaw never had any interest in the company or profited from it in any way.

<sup>10</sup> The credit accounts were used for Bay Construction's operations and projects, including paying for items used to repair Gosey's home. Bradshaw's son, an employee of Bay Construction, used one of the company's credit accounts for personal purchases of approximately \$2,600. Bradshaw also used the same account to make a \$13 personal purchase. He repaid Bay Construction for both his and his son's charges.

Construction's RMO. On November 19, 2014, Bradshaw wrote a letter to Gonzalez telling him that Invernon "must be engaged in 'direct supervision and control' of the work." On December 22, 2014, the CSLB issued Bay Construction a contractor's license. Gonzalez was listed on the license as CEO and President of Bay Construction.

In January 2015, another plumbing problem occurred. A sewage pipe burst at Gosey's house, requiring that the trust pay for emergency repairs and for Gosey's tenants to be temporarily relocated. Bay Construction did the repair work. Bradshaw's son began working for Bay Construction around this time.

#### **G. Bradshaw Files First and Final Report and Account in Trust Case**

On February 3, 2015, Bradshaw filed the First and Final Report and Account in the trust case covering December 5, 2013, through November 20, 2014, providing an itemization of the trust disbursements and assets for that period. On a form drafted by Robello, Bradshaw also stated, "During the period of the account, there was no relationship or affiliation between [Bradshaw] and any agent hired by [Bradshaw] during the accounting." On July 31, 2015, the court approved the accounting. Bradshaw requested a second time that the court terminate its supervision over the trust. The court did not grant Bradshaw's request, and, this time, Bradshaw appealed.<sup>11</sup>

#### **H. Bay Construction Hired for Repair Work**

Bradshaw learned that the two-story spiral back staircase of Gosey's home was in disrepair. In June 2014, he obtained a permit to fix the stairs himself, and in January 2015, he hired Bay Construction to do the repairs. The Department of Building Inspection for the City and County of San Francisco (DBI) rejected Bay Construction's initial plans for repair of the stairs and required the staircase to be completely replaced. The total cost of the replacement was

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<sup>11</sup> On July 29, 2016, the appellate court reversed the trial court's ruling, finding that no basis existed for court supervision of the trust.

\$48,909.20, which was paid by the Gosey Trust to Bay Construction. Patrick Kelley, a construction expert, testified that the work on the stairs was competently done, the stairs were code-compliant, and the cost of the stairs was reasonable. DBI approved the work on the stairs on March 30, 2015.

Bradshaw testified that, after an inspection, a pest control company determined in 2015 that the foundation of Gosey's home was crumbling, causing the house to shift. Lewis testified that her back door would no longer close. In July 2015, DBI issued a building permit for the foundation repair, which Bay Construction performed. Bradshaw authorized and paid Bay Construction \$70,793.36 from the Gosey Trust for the foundation repair work. DBI approved the work on September 2, 2015. Kelley testified that such a job would be difficult and time-consuming given that the old foundation had to be removed by hand before installing the new one and all the work was done in a very restricted space. He also stated that the cost was fair and reasonable and that the foundation work was competently done. Altogether, the parties stipulated that, between approximately January 26, 2015, and February 17, 2016, the Gosey Trust paid Bay Construction \$157,246.76 for its services.<sup>12</sup>

#### **I. Bradshaw Obtains Second Reverse Mortgage**

On July 19, 2016, Bradshaw filed a petition for a second reverse mortgage on Gosey's home, asserting that it was necessary because Gosey's monthly expenses exceeded her income by approximately \$7,644 each month, and her remaining funds would be exhausted in two to three months. Bradshaw requested a disbursement that would allow him to pay off the existing reverse mortgage and provide for an additional \$479,205.31 for Gosey's care and living

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<sup>12</sup> Other work done by Bay Construction on Gosey's property during this period included repair of termite damage, replacement of a water heater, toilet, shower plumbing and tile in Gosey's home, and repair of the tenants' bathroom plumbing, walls, and subfloor, along with other miscellaneous work. OCTC did not present any evidence to rebut the evidence presented by Bradshaw that the work Bay Construction performed was necessary, competently done, and reasonably priced.

expenses. In this petition, Bradshaw informed the court that funds received from the first reverse mortgage had been used to pay Gosey's monthly expenses and also for repairs to the property, which he specifically detailed.

After Bradshaw filed the petition for the second reverse mortgage, the court became aware of a relationship between Bradshaw and Bay Construction. On August 3, 2016, the court appointed Nancy Rasch to represent Gosey with respect to the conservatorship and the trust. On September 26, Rasch filed a declaration stating that she learned that Juan Gonzalez was the principal of Bay Construction, Bradshaw was his attorney, and Bradshaw's son was working for Gonzalez. She believed that the lack of clarity and disclosure needed to be rectified to determine if the funds spent on Bay Construction work were reasonable. Rasch also stated that Bradshaw did not obtain additional bids for the non-emergency repairs, and she was unclear how Gonzalez became a licensed contractor.

On September 19, 2016, the court's probate examiner asked Bradshaw to submit a supplemental declaration explaining how the funds from the first reverse mortgage were depleted so quickly, including specific information about all repairs paid for with those funds. In response, Bradshaw submitted a first supplemental declaration on September 22. He stated that most of the funds from the reverse mortgage were used to pay for Gosey's care and necessary repairs to her home about which he provided more detail. Bradshaw also stated that he "called several contractors in an attempt to obtain bids to address the emergency repairs, but most of the contractors did not return my calls much less offer a bid."

Bradshaw filed a second supplemental declaration on September 26, 2016, providing detail about his relationship with Gonzalez. Bradshaw stated that he allowed Gonzalez to use his office as a "home base" for Bay Construction because Gonzalez was hard-working and "needed help getting a leg up." He stated that he prepared certain documents in order to help Gonzalez

incorporate Bay Construction. He also reiterated that he had contacted other contractors about bidding on repair work, but “rarely” got calls of interest back. Additionally, Bradshaw declared, “I have no relationship with Bay Construction or Mr. Gonzalez. I do not have, and never have had, a financial interest in Bay Construction or its construction projects.” Bradshaw also disclosed that Gonzalez independently decided to hire Bradshaw’s son.

In October 2016, the court authorized Bradshaw to obtain the second reverse mortgage on Gosey’s home, in which the net proceeds were not to exceed \$250,000 and were to be used only for Gosey’s care and living expenses. The court also required Bradshaw to provide monthly reports to Rasch explaining all expenditures from the second reverse mortgage proceeds.

Approximately nine months later, Gosey passed away. Subsequently, on August 10, 2017, one of the beneficiaries to the Gosey Trust filed a petition that, *inter alia*, sought to have Bradshaw removed as the trustee. On January 25, 2018, the superior court removed Bradshaw as the trustee.

### **III. CULPABILITY<sup>13</sup>**

#### **A. Count Four: Moral Turpitude—Misrepresentation (§ 6106)<sup>14</sup>**

In count four, OCTC alleged that Bradshaw made numerous misrepresentations.<sup>15</sup> The hearing judge found Bradshaw culpable of three misrepresentations: (1) on August 30, 2013,

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<sup>13</sup> OCTC has the burden of proving culpability by clear and convincing evidence. (Rules Proc. of State Bar, rule 5.103.) Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

<sup>14</sup> We begin our culpability analysis with this count, as the charged acts of misrepresentation are part of OCTC’s allegations of a scheme to defraud, discussed below. Section 6106 states, “The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.”

<sup>15</sup> The hearing judge found Bradshaw culpable on three of the misrepresentation allegations pleaded in count four. While agreeing with the hearing judge’s culpability findings, OCTC also requests in its appeal that Bradshaw be found culpable on two additional acts of misrepresentation as pleaded in the FANDC. Because OCTC did not seek to have any additional findings of fact considered in its appeal, we limit our review to only those culpability findings by

Bradshaw falsely stated in his petitions for appointment as conservator that Gosey was removed from her home by APS; (2) on February 3, 2015, Bradshaw falsely stated in the First and Final Report and Account that between December 2, 2013 and November 30, 2014, “there was no relationship or affiliation between [Bradshaw] and any agent hired by [Bradshaw] during [the] accounting”; and (3) on September 26, 2016, Bradshaw falsely stated in his second supplemental declaration that he had no financial interest in Bay Construction.

### **1. Bradshaw’s Statement Regarding APS**

In his August 30, 2013 petitions to be appointed temporary and permanent conservator, Bradshaw stated that Gosey “was recently removed from her home by Adult Protective Services . . .” The hearing judge found that Gosey was not removed from her home by APS, and, because Bradshaw knew or should have known that the statement in his petition was false, he was culpable of making a misrepresentation in that petition.

Bradshaw asserts that OCTC did not establish that his statements in these petitions were false. However, we note that Bradshaw did stipulate that Gosey’s tenants were the ones who arranged the ambulance to take her to the hospital. Bradshaw argues that even if the statements regarding APS were false, it was a simple mistake and also not material to the petition. He states that he was told “third hand” that APS removed Gosey from her home. OCTC asserts that the statement was material because it improved Bradshaw’s chances of the court granting his petition as it portrayed “Gosey’s deterioration as so profound as to require APS intervention.”

While we conclude that Bradshaw’s statements were inaccurate given the Stipulation, we fail to see how the manner of Gosey’s removal from her home or Bradshaw’s erroneous statement improved the chances of his petition being granted or as material to the issues before the probate court. Many other facts were pleaded in the two petitions, which, along with the

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the judge and the two additional acts of misrepresentation as requested by OCTC. (Rules Proc. of State Bar, rule 5.152(C) [factual error not raised on review is waived].)

report of the probate court investigator, were sufficient for the superior court judge to find that a conservator was necessary. (See *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 497 [misrepresentation to tribunal must be material to issues before it].) Because we do not see the statement as material, we decline to find culpability for Bradshaw's statement.

## **2. Bradshaw's Statement in First and Final Report and Account**

On February 3, 2015, Bradshaw filed the First and Final Report and Account in his role as the trustee of the Gosey Trust, which covered the period of December 5, 2013, through November 30, 2014. As part of his required reporting duties, Bradshaw stated, "During the period of the account, there was no relationship or affiliation between [Bradshaw] and any agent hired by [Bradshaw] during the accounting."

The hearing judge found that, during the relevant time period, Bradshaw had an attorney-client relationship with Gonzalez and was in the process of forming Bay Construction with him. Therefore, the judge determined that Bradshaw's February 3, 2015 statement was false, and thus she found him culpable of a misrepresentation. We disagree.

Bradshaw's trust law expert, Albert Handelman, an attorney certified as a specialist in estate planning, trust, and probate law, testified that the literal reading of Bradshaw's statement is a logical impossibility because any trustee who hires an agent must have some relationship with that agent by virtue of the fact that the trustee hired the agent. Based on our review of the record, we agree with the trust law expert as to the part of the statement that Bradshaw had no relationship with Gonzalez, NJ Construction, or Bay Construction, and thus we assign no culpability for the statement as a misrepresentation.

Bradshaw's statement otherwise complies with Probate Code section 1064, subdivision (a)(4), which requires that a petition for approval of an account must disclose any "family or affiliate relationship between the fiduciary and any agent hired by the fiduciary during

the accounting period.”<sup>16</sup> Bradshaw argues that while his statement was mistakenly written as “no relationship or affiliation,” his and his attorney’s intention was to state instead “no family or affiliate relationship” in conformance with the language in the Probate Code section 1064, subdivision (a)(4). Bradshaw argues that his relationship with Gonzalez does not qualify as a family or affiliate relationship under that section because he did not have control over Gonzalez, NJ Construction, or Bay Construction during the reporting period. We do not find clear and convincing evidence that Bradshaw had an affiliate relationship with Gonzalez, NJ Construction, or Bay Construction during the period that the First and Final Report and Account covered, within the meaning of that term as defined in Probate Code section 1064, subdivision (a)(4).

Accordingly, we assign no culpability for his February 3, 2015 statement.

### **3. Bradshaw’s Statement in Second Supplemental Declaration**

On September 26, 2016, Bradshaw filed a Second Supplemental Declaration Regarding the Petition for Order Authorizing Conservator to Obtain Additional Reverse Mortgage. In that filing, Bradshaw stated, “I do not have, and never have had, a financial interest in Bay Construction; nor have I received any financial benefit from Bay Construction or its construction projects.” The hearing judge found that Bradshaw had extensive financial interests with Bay Construction, including paying \$10,000 toward its initial startup, serving as its attorney, and purportedly loaning additional sums to the company. Therefore, the judge determined Bradshaw’s statement that he had no financial interest in Bay Construction was false. We disagree.

Bradshaw argues that he meant “financial interest” to mean an ownership interest in the company, and because he had no ownership interest, he did not make a misrepresentation. In support of his position, Bradshaw relies on the testimony of Handelman, who testified that

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<sup>16</sup> “Family” is defined in the statute as “a relationship created by blood or marriage,” and “affiliate” is defined as “an entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, the fiduciary.” (Prob. Code, § 1064, subd. (c).)

“financial interest” is not the same as a “financial relationship,” and opined that the former term means an ownership interest in an entity, or that it meant receiving a percentage of the profits from the entity; it does not mean a debtor-creditor relationship that the latter term implies. Handelman testified under cross-examination that, therefore, Bradshaw’s use of the term “financial interest” did not obligate him to disclose any loans he made to Bay Construction, the bank account on which he was the signatory, or the credit cards in Bay Construction’s name that Bradshaw used. Based on the trust expert’s unrebutted testimony, we find clear and convincing evidence does not exist to establish that Bradshaw’s September 26, 2016 statement was a misrepresentation to the probate court. Therefore, we do not assign culpability for the statement.

#### **4. OCTC’s Appeal for Additional Misrepresentations**

In its appeal, OCTC asserts that Bradshaw committed two additional misrepresentations that the hearing judge did not find, but were factually pleaded within count four of the FANDC. First, OCTC argues that, on September 22, 2016, in a declaration regarding his petition for an additional reverse mortgage, Bradshaw falsely claimed twice that he attempted to solicit bids from several contractors for work performed on Gosey’s property. Specifically, OCTC argues that Bradshaw provided no documentation or testimony from other witnesses to support that statement, and, because the hearing judge found that Bradshaw was not credible when he testified that he called other contractors at various times to obtain bids, we should find that his September 22, 2016 statements were also false misrepresentations to the probate court. Bradshaw argues that OCTC has the burden to establish he made a false statement to the probate court when he said he attempted to get bids from several contractors. We agree with Bradshaw. While the hearing judge found Bradshaw to be not credible, this does not necessarily lead to the conclusion that his statements were false. (See *Edmonson v. State Bar* (1981) 29 Cal.3d 339,

343 [law is well-settled that rejection of testimony does not create affirmative evidence to contrary].)

Next, OCTC argues that on September 20, 2017, in a declaration in superior court for another case involving the Gosey Trust,<sup>17</sup> Bradshaw falsely claimed that he had no financial or ownership interest in Bay Construction and that he took no funds from the Gosey Trust. Further, OCTC claims that Bradshaw's statements, signed under penalty of perjury, were permeated with half-truths, omissions, and outright misstatements of fact. Bradshaw argues that the evidence does not establish OCTC's claim. We agree. As discussed previously, we do not find sufficient evidence in the record that Bradshaw had a financial interest in Bay Construction.

As for OCTC's argument that Bradshaw had an ownership interest in Bay Construction, our review of the record indicates that he had no ownership interest.<sup>18</sup> The hearing judge found that Bradshaw lacked credibility regarding his testimony that he had "limited control" of Bay Construction. However, she premised that finding on his testimony being "contradicted by numerous credible exhibits, as well as the testimony of Mr. Gonzalez and other witnesses," though she does not specify on which particular exhibits and witnesses she relies, except for Gonzalez. Upon our review of the record, we can find no other witnesses who testified that Bradshaw had control of Bay Construction. Further, all the documents in the record indicate Gonzalez's ownership of Bay Construction, including those regarding corporate action as the sole shareholder, and are executed with Gonzalez's signature. Finally, we find no evidence that Bradshaw "took" money from the Gosey Trust. While the record shows that money was paid

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<sup>17</sup> *In Re The Gosey Revocable Living Trust Dated January 3, 2007*, San Francisco County Superior Court No. PTR-17-301118.

<sup>18</sup> We note that Gonzalez testified that Bradshaw orally told him that Bay Construction's ownership would be split in favor of Bradshaw at 51 percent to Gonzalez's 49 percent. However, while testifying to this ownership split, Gonzalez also testified that an employee of CSLB and someone from the district attorney's office had interviewed him as part of a potential criminal investigation. We also note that, at least twice, Gonzalez's answers to Bradshaw's attorney's questions were inconsistent.

from Bay Construction to Bradshaw's law firm, nowhere does the record show that Bradshaw directly took money from the trust. In fact, the record shows that Bradshaw, at least to the point of trial in this matter, has deferred any fees that he may have been entitled to take as the trustee.<sup>19</sup>

We conclude that none of the findings by the hearing judge on this count can be upheld based upon the record,<sup>20</sup> and the request by OCTC for additional findings in its appeal must also be rejected as not supported by the record. We therefore dismiss count four with prejudice.

#### **B. Count One: Moral Turpitude—Scheme to Defraud (§ 6106)**

##### **1. Introduction**

In count one, Bradshaw is charged with violating section 6106 by engaging in a scheme to defraud and committing an act or acts involving moral turpitude, dishonesty, or corruption. Even if individual acts do not involve moral turpitude, a pattern of misconduct may amount to moral turpitude. (See *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1, 14 [attorney committed similar acts in numerous matters which amounted to overall pattern of misconduct constituting moral turpitude].)

Based on her review of the record, the hearing judge stated that she found the evidence demonstrated that Bradshaw engaged in a prolonged scheme to defraud the Gosey Trust. That scheme included making misrepresentations in court documents regarding his financial affiliation with Bay Construction and failing to disclose his true affiliation to the court so he could continue to function as trustee; hiring and paying an unlicensed contractor for services that were required to be performed by a licensed contractor; and requesting first and second reverse mortgages on Gosey's home for the purported purpose of providing for Gosey's care while

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<sup>19</sup> To the extent that OCTC meant that his taking money is an act of misappropriation, we address this under count three, discussed below.

<sup>20</sup> See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 638 [deference given to hearing judge's credibility-based findings unless specific showing that such were made in error].

concealing from the court that he intended to use substantial amounts of the trust money on construction for Gosey's home.<sup>21</sup> The hearing judge also found that Bradshaw perpetuated this scheme "by running Bay Construction from the shadows," and he incorporated, funded, and controlled the finances of Bay Construction so that he could self-deal with the trust clandestinely and circumvent his duties as trustee. Finally, the judge found that Bradshaw attempted to defraud the trust by trying to eliminate court supervision during the time he paid Bay Construction \$157,246.76.

Bradshaw asserts on appeal that he did not engage in a scheme to defraud Gosey or the trust. Specifically, he argues that, because the hearing judge did not find him culpable of misappropriation under count three, he could not have engaged in a scheme to defraud. We reject Bradshaw's argument that a dismissal of count three necessitates a dismissal of count one. We focus our analysis instead on Bradshaw's argument that the judge's findings of fact establishing culpability on this count are in error. On review, OCTC agrees with the hearing judge's analysis of Bradshaw's culpability under count one and asserts that the decision clearly delineates Bradshaw's acts as a scheme to defraud the trust. OCTC also asserts that Bradshaw has not established any reasonable doubts or errors concerning the judge's findings.

## **2. The Finding Regarding Misrepresentation of Bradshaw's Affiliation with Bay Construction**

As discussed earlier in the opinion, we find that the evidence does not establish that Bradshaw was the owner of Bay Construction. Nor does it establish that he had control of the company. Even if Bradshaw had owned or otherwise had actual control of Bay Construction, the trust's provision regarding limitations on loyalty clearly would have allowed him to have a

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<sup>21</sup> Count one of the FANDC alleged several actions by Bradshaw that compromised the scheme to defraud. The hearing judge did not find all of those actions in determining his culpability under this count. Because OCTC did not seek to have additional findings of fact under this count considered in its appeal, we limit our review to only those facts as found by the judge. (Rules Proc. of State Bar, rule 5.152(C).)

business relationship with the trust, as long as he did not act in bad faith or in disregard of the purposes of the trust, the services provided were necessary, and the services were at fair market value. Handelman testified that trust provisions modifying the statutory duty of loyalty are standard and provide for greater flexibility in trust administration. No clear and convincing evidence establishes that Bradshaw made misrepresentations about his connection to Bay Construction or that he did so as part of a scheme to defraud the trust.

### **3. The Finding that Bradshaw Hired and Paid an Unlicensed Contractor for Services that Required a Licensed Contractor**

Bradshaw asserts that the hearing judge's finding—that he defrauded the trust when he hired an unlicensed contractor for services required to be performed by a licensed contractor—was erroneous. This finding was brief and we are uncertain how the judge meant it to relate to the alleged scheme to defraud. At oral argument, OCTC sought to clarify this point by arguing that, when the trust paid for work to be done by a licensed contractor and it was done instead by an unlicensed contractor, the result is a fraud on the trust. As discussed previously, we find that Bay Construction was licensed when it was paid for Gonzalez's work on Gosey's home in 2015.<sup>22</sup> Additionally, the construction expert Kelley testified that the work was of competent quality. Accordingly, we do not find that hiring and paying Gonzalez and Bay Construction show that Bradshaw schemed to defraud the trust.

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<sup>22</sup> Carlos Marquez, a 31-year CSLB employee, testified that the CSLB would not have issued the license to Bay Construction if it had known that Invernon was not going to fulfill his duties as RMO. However, this conclusion after the fact does not negate that Bay Construction had an active license when the work was done on Gosey's home. Marquez also testified that the RMO has full liability for the work done, even if the license is being used by another person or entity. Further, he testified that a consumer would not be in violation of the law for using an unlicensed contractor, only the unlicensed contractor would be. Finally, DBI signed off on the permits for the work on Gosey's home, and we see no reason why it would have done so if Bay Construction, the entity listed on the permits, did not have an active and valid license.

#### **4. The Finding Regarding Bradshaw's Purpose in Obtaining Reverse Mortgages**

Bradshaw argues that his requests to obtain reverse mortgages on Gosey's home do not show a scheme to defraud. He correctly asserts that, as the trustee, he was obligated under the trust's purposes to use trust assets, comprised mostly of the equity in Gosey's home, to pay for her care and to ensure that she could remain in a home that was safe for her. He reiterates that the work done on Gosey's home was necessary, for a reasonable price, and competently done. OCTC does not assess the relationship of the reverse mortgages to the alleged scheme to defraud beyond asserting that we should affirm the hearing judge's finding that Bradshaw concealed from the court that he intended to use the trust money for construction on Gosey's home.

Bradshaw also contends that the timeline does not suggest that he requested the mortgages in order to defraud the trust. He first petitioned for a reverse mortgage in February 2014 when he was clearly aware that, because of Gosey's need for full-time care, access to her home's equity would be required. Later, some of those funds were used to pay for emergency repairs, which were necessary and consistent with Gosey's expressed desire to remain in her home. The bulk of the construction costs did not occur until January 2015 and continued through November of that year. Bradshaw did not apply for a second reverse mortgage until July 2016, when Bay Construction was no longer an operating business. He asserts that it would be illogical to file for a second reverse mortgage in order to defraud the trust through a construction company that no longer had a license.<sup>23</sup> We agree.

We do not find clear and convincing evidence that Bradshaw improperly concealed from the court the intended purpose of the money from the reverse mortgages. We again emphasize that Bradshaw had the duty to use trust funds to care for Gosey and ensure that she remained in her home. Due to the construction costs, the funds from the first reverse mortgage were depleted

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<sup>23</sup> Nonetheless, Bradshaw clearly described the construction work performed by Bay Construction and the costs for the work in his petition for a second reverse mortgage.

sooner than he anticipated, and Bradshaw then asked for a second reverse mortgage, which was granted. OCTC did not prove that Bradshaw's requests for reverse mortgages, which were granted by the court, were connected to a scheme to defraud the trust.

### **5. The Finding that Bradshaw Ran Bay Construction from the Shadows**

We disagree with the hearing judge's finding that Bradshaw perpetrated his scheme to defraud "by running Bay Construction from the shadows." While Bradshaw did incorporate Bay Construction and provided money to it in order to help Gonzalez, clear and convincing evidence does not exist to show that Bradshaw controlled or owned Bay Construction. His actions concerning Bay Construction do not demonstrate that he attempted to avoid his duties as trustee—quite the contrary. Accordingly, we do not find that Bradshaw ran Bay Construction from the shadows in an attempt to defraud the trust.

### **6. The Finding that Bradshaw Avoided Court Supervision in Order to Defraud**

Bradshaw insists that his attempts to eliminate court supervision over the trust do not show a scheme to defraud. We agree. Bradshaw maintained that he sought to eliminate court supervision in order to keep costs down. Robello testified that eliminating court supervision over the trust would save costs. Notably, she also testified that court supervision is normally not necessary because the Gosey Trust was an existing trust, not created by the court, with a named person acting as the trustee. She explained that court supervision usually occurs when the court actually creates the trust. We see no reason to not rely on her unrebutted testimony.

OCTC argues that Bradshaw's attempts to eliminate court supervision over the trust show that he was endeavoring to defraud the trust. OCTC requests that we affirm the hearing judge's finding that Bradshaw paid Bay Construction \$157,246.76 after filing the First and Final Report and Account because he believed that court supervision would be terminated. OCTC concludes that Bradshaw wanted to eliminate court supervision, thus foregoing attorney fees, in order to

gain unfettered access to the trust assets. We disagree. Both Bradshaw and Robello testified that they sought to eliminate court supervision to decrease costs. The hearing judge and OCTC relied on an inference that Bradshaw did so for a fraudulent purpose, but clear and convincing evidence was not produced to support such an inference.

## **7. Culpability for Scheme to Defraud Not Established**

We reverse the hearing judge's factual findings regarding culpability under count one.<sup>24</sup>

None of Bradshaw's actions, described above and taken together, amount to a scheme to defraud. OCTC did not present clear and convincing evidence that his actions constituted moral turpitude or that he acted dishonestly to defraud the trust. Accordingly, we do not find that Bradshaw engaged in a scheme to defraud the trust in violation of section 6106. Because we find a lack of evidence, count one is dismissed with prejudice.

### **C. Count Two: Breach of Fiduciary Duty (§ 6068, subd. (a))**

In count two, OCTC alleges that Bradshaw violated section 6068, subdivision (a), by breaching the fiduciary duties<sup>25</sup> he owed to Gosey and the beneficiaries of her trust.<sup>26</sup> The hearing judge found Bradshaw culpable.<sup>27</sup> The judge specifically found that Bradshaw willfully

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<sup>24</sup> *In the Matter of Bach, supra*, 1 Cal. State Bar Ct. Rptr. at p. 638.

<sup>25</sup> In the FANDC, OCTC alleged that Bradshaw breached "common law fiduciary duties" he owed to Gosey and the beneficiaries of the trust. However, the nature of the duties arising out of trust relationships is primarily statutory. (*Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 271–272.) Therefore, our analysis here is concentrated on the law of trusts under the Probate Code.

<sup>26</sup> In count two, OCTC included the alleged actions committed by Bradshaw that it used in count one to charge engaging in a scheme to defraud. As with count one, OCTC did not seek to have additional findings of fact considered in its appeal for count two. Again, we limit our review to only those facts found by the judge. (Rules Proc. of State Bar, rule 5.152(C).)

<sup>27</sup> The hearing judge excluded a portion of Handelman's testimony regarding his conclusions of law that Bradshaw satisfied the standard of care under Probate Code section 16040, met his duty of loyalty to Gosey and the beneficiaries, and met his duty to avoid conflicts. On review, we may not disturb the judge's ruling on the admissibility of opinion evidence absent an abuse of discretion. (*Amtower v. Photon Dynamics* (2008) 158 Cal.App.4th 1582, 1599.) Further, the use of a lawyer as an expert witness to give an opinion on the

violated the duty of loyalty and the duty to avoid conflicts by “surreptitiously and repeatedly” hiring Bay Construction to perform work on Gosey’s home between January 2015 and February 2016. She found that Bay Construction was Bradshaw’s company and that he did not disclose his affiliation with Bay Construction. The judge also found that Bradshaw did not “earnestly seek out and obtain bids from licensed contractors.” The judge concluded that Bradshaw knew the work done by Bay Construction was not supervised by a licensed contractor because he had “orchestrated the arrangement” with Invernon.

Section 6068, subdivision (a), provides that it is the duty of an attorney to “support the Constitution and laws of the United States and of this state.” The law requires that a trustee administer the trust *according to the terms of the trust*, and with reasonable care, skill, and caution as a prudent person acting in similar circumstances. (Prob. Code, §§ 16000, 16040, subd. (a).) Additionally, trustees have a duty of loyalty: they must “administer the trust solely in the interest of the beneficiaries.” (Prob. Code, § 16002.) The duty to avoid conflicts of interest provides that a trustee will not “use or deal with trust property for the trustee’s own profit or for any other purpose unconnected with the trust . . . .” (Prob. Code, § 16004, subd. (a).) As a fiduciary, a trustee has a duty “to act with the utmost good faith . . . .” (*Hearst v. Ganzi* (2006) 145 Cal.App.4th 1195, 1208.)

The Gosey Trust indicated that its prime purpose was to promote the health, maintenance, comfort, and support of Gosey. Also, Gosey indicated that she wanted to stay in her home and that her estate assets should be used to avoid placing her in a rest home. Bradshaw testified that the repairs and construction done on Gosey’s home, which was over 100 years old, were necessary to allow Gosey to remain in her home. OCTC did not present any evidence showing

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application of the law to particular facts is inadmissible. (*Summers v. A.L. Gilbert Co.* (1999) 69 Cal.App.4th 1155, 1179–1180.) We find no abuse of discretion in the hearing judge’s exclusion of Handelman’s testimony as it related to his opinions regarding ultimate conclusions of law, and we do not rely on those conclusions of law here.

that the work was not necessary. Further, the uncontradicted evidence at trial established that the work was of competent quality and done for fair market value.

Bradshaw asserts that he did not breach his fiduciary duty to Gosey or the beneficiaries. He argues that he met the primary fiduciary duty of administering the trust according to its terms and in compliance with Probate Code section 16000. We agree. As conservator and trustee, Bradshaw was tasked with providing for Gosey's care and doing all that was possible to allow her to stay in her home. By obtaining reverse mortgages, arranging for Gosey's care, and maintaining her home at a fair cost so that she could stay there, he fulfilled his fiduciary duties under the trust. As discussed above, he was not required to disclose to the court his connection to Bay Construction because he did not own or control it. The evidence shows that Bradshaw properly performed his fiduciary duties by administering the trust for Gosey's benefit.

In addition, we find that Bradshaw did not breach his duty of loyalty or his duty to avoid conflicts of interest. Under the terms of the trust, even if he owned or controlled Bay Construction, he had the ability to do business with the trust as long as he did not act in bad faith or in disregard of the purposes of the trust. OCTC argues a rebuttable presumption exists that Bradshaw violated his fiduciary duties under Probate Code section 16004, subdivision (c), because he "gained an advantage by hiring his own construction company to do the work on Gosey's home." Probate Code section 16004, subdivision (c), provides that if a trustee "obtains an advantage" in a transaction between the trustee and a beneficiary, then it is "presumed to be a violation of the trustee's fiduciary duties," but OCTC did not present any evidence that Bradshaw received an advantage within the meaning of Probate Code section 16004, subdivision (c). No evidence in the record demonstrates that Bradshaw dealt with the trust for his own profit, made a deal that was unconnected to the trust's purpose, or took part in a transaction that was adverse to the trust beneficiary. Bradshaw presented evidence from Phillip

Allman, an economist who analyzed the cash flow between Bradshaw and Bay Construction, who determined that Bradshaw was still owed over \$30,000 from Bay Construction based on his loans to it and other payments made on Gonzalez's behalf. Bradshaw presented unrebutted evidence that he did not obtain an advantage from his dealings with Bay Construction and the Gosey Trust.

As to the hearing judge's finding that Bradshaw breached his fiduciary duties by failing to seek bids from licensed contractors, the evidence presented at trial showed that Bradshaw was not required to seek additional bids.<sup>28</sup> The evidence presented was that the work performed by Bay Construction was competent and done at fair market value. In addition, no clear and convincing evidence exists that Bradshaw knew that Invernon was not supervising the construction on Gosey's home as the judge found. The evidence here shows that Bay Construction had an active license when it repaired Gosey's home.

We do not find clear and convincing evidence that Bradshaw breached his fiduciary duties by acting unreasonably, in bad faith, or in disregard of the trust's purposes. Additionally, we do not find clear and convincing evidence that Bradshaw violated his duty of loyalty or his duty to avoid conflicts. Therefore, count two is dismissed with prejudice.

#### **D. Count Three: Moral Turpitude—Misappropriation (§ 6106)**

In count three, the FANDC alleges that Bradshaw misappropriated \$157,246.76 from the Gosey Trust to Bay Construction, which OCTC alleged was his construction company. The hearing judge determined that "a charge of misappropriation is not appropriate under the present facts and circumstances." The judge found that no clear and convincing evidence existed to establish that Bay Construction did not perform the work for which it was retained or that the amount paid to Bay Construction exceeded market rates. Therefore, the judge dismissed

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<sup>28</sup> Handelman, Rasch, and Jeremiah Raxter, attorney for one of the beneficiaries, all testified that a trustee is not required to obtain competitive bids.

count three with prejudice. Upon our independent review, we also find insufficient evidence to support a charge of misappropriation here.

An attorney clearly violates section 6106 when that attorney engages in misappropriation. (See *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 278 [“Section 6106 prohibits an attorney from engaging in any act involving moral turpitude . . . , and ‘[t]here is no doubt that the [willful] misappropriation of a client’s funds involves moral turpitude [Citations]’”].) Additionally, “an attorney’s failure to use entrusted funds for the purpose for which they were entrusted constitutes misappropriation. [Citation.]”” (*Baca v. State Bar* (1990) 52 Cal.3d 294, 304.)

On review, OCTC challenges the hearing judge’s dismissal of count three, arguing that Bradshaw diverted and wrongfully appropriated Gosey’s trust funds for his own benefit as owner of Bay Construction in violation of section 6106. OCTC asserts that the judge focused on “factors . . . immaterial” to culpability. Specifically, OCTC asserts that “culpability for misappropriation is not based on whether the work was performed or at what cost, but . . . whether [Bradshaw] wrongfully appropriated Gosey’s funds for his own use and benefit, regardless of whether Gosey received any indirect or residual benefit.”<sup>29</sup> Bradshaw argues that he could not misappropriate funds because he did not own Bay Construction and the work done by it was “actually performed at fair market prices.”

In examining if Bradshaw misappropriated Gosey Trust funds to Bay Construction, OCTC has the burden to prove by clear and convincing evidence that such a misappropriation occurred. Returning again to the trust language, Bradshaw had the duty as Gosey’s trustee to administer the trust funds as specified in the trust, which emphasized, as a priority, using trust

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<sup>29</sup> We focus our analysis only on whether Gosey Trust funds were misappropriated to Bay Construction, as specifically pled in count three of the FANDC. Our discussion that Bradshaw did not personally benefit from the trust funds, as now argued on appeal, is discussed under count two as a breach of fiduciary duty.

assets to keep her safely in her home. Bradshaw exercised this authority by using trust fund money to pay Bay Construction for work it did on Gosey's home. Bradshaw provided evidence that the projects undertaken by Bay Construction were necessary, through his testimony and those of the construction expert Kelley and Gonzalez; however, OCTC provided almost no testimony or documentation to refute this production of evidence.<sup>30</sup> Kelley also provided unrebutted testimony that all the projects performed by Bay Construction were competently done, and that the charges made by Bay Construction to the Gosey Trust for all the work performed were reasonable, given the difficulty of working on a home of that type and age<sup>31</sup> and given market prices in San Francisco at the time for similar work.

Accordingly, no evidence supports misappropriation of the \$157,246.76 paid by the Gosey Trust to Bay Construction. Because OCTC did not meet its burden of proof, we dismiss count three with prejudice.

**E. Count Five: Unlawfully Acting as a Contractor Without a License (§ 6068, Subd. (a); § 7028)**

The hearing judge found no clear and convincing evidence demonstrating that Bradshaw engaged in the construction business without a contractor's license, in violation of section 7028. Therefore, the judge dismissed count five with prejudice, which OCTC does not challenge on review. We agree with the hearing judge's decision to dismiss count five with prejudice.

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<sup>30</sup> For example, regarding the stairs, Bradshaw testified that he began a small repair job that led to the stairs having to be replaced to conform to San Francisco's current building code. Kelley testified that upon his review of the permits and other documentation, the likely scenario was as Bradshaw described in that, once DBI came to inspect the repair work, it concluded that more than 50 percent of the stairs had to be repaired, which then required that the repaired stairs had to be nonetheless replaced. Further, Gonzalez testified that he did not perform any unnecessary work on Gosey's property; in fact, he testified that the staircase was in a "dangerous" condition. The only evidence that could call into question Bradshaw's evidence is that Lewis testified that she noticed nothing wrong with the stairs, other than a loose handrail.

<sup>31</sup> Kelley estimated that Gosey's home was built in the early 1900s.

#### IV. ORDER

As Drexel Andrew Bradshaw is not culpable of the charges alleged in the FANDC, we order this case dismissed with prejudice. Bradshaw may move for reimbursement of costs in accordance with section 6086.10, subdivision (d), and rule 5.131 of the Rules of Procedure of the State Bar.

Because we order this case dismissed, pursuant to rule 5.111(D)(2) of the Rules of Procedure of the State Bar, we further order that Bradshaw's inactive enrollment, ordered September 2, 2018, under Business and Professions Code section 6007, subdivision (c)(4), be vacated upon the filing of this opinion. This order does not affect his ineligibility to practice law that has resulted or that may hereafter result from any other cause.

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on July 30, 2019, I deposited a true copy of the following document(s):

### OPINION AND ORDER FILED JULY 30, 2019

in a sealed envelope for collection and mailing on that date as follows:

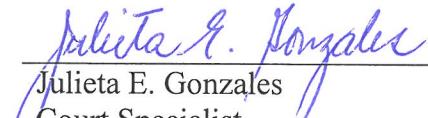
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DREXEL ANDREW BRADSHAW  
3053 FILLMORE ST #205  
SAN FRANCISCO, CA 94123-4009

by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Joseph R. Carlucci, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 30, 2019.

  
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Julieta E. Gonzales  
Court Specialist  
State Bar Court